

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES EDWARD JONES,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
BERNIE WARNER, END OF
SENTENCE REVIEW COMMITTEE,
KIMBERLY ACKER and ANMARIE
AYLWARD,

Defendants.

NO: CV-13-075-RMP

ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE

Before the Court is Plaintiff's First Amended Complaint, ECF No. 13. Plaintiff, a civil detainee at the Special Commitment Center in Steilacoom, Washington, is proceeding *pro se* and *in forma pauperis*. He is challenging his referral and assignment as a sexually violent predator. His civil commitment trial date is scheduled for January 6, 2014.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE --1

1 As previously admonished the only federal remedy for a detainee
2 challenging a civil commitment is a petition for writ of habeas corpus pursuant to
3 28 U.S.C. § 2254. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *see also*
4 *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1139-40 (9th Cir. 2005)("[D]etainees
5 under an involuntary civil commitment scheme . . . may use a § 2254 habeas
6 petition to challenge a term of confinement.").

7 In his First Amended Complaint Plaintiff focuses on a Program Manager for
8 the End of Sentence Review Committee, Kimberly Acker, and a Chair of that same
9 Committee, Anmarie Aylward, claiming they "regulated and instructed," and/or
10 "participated in and submitted to[,] arbitrary actions which caused deprivation of
11 plaintiff's liberty." Apparently, they referred Plaintiff for "possible filing
12 consideration as a Sexually Violent Predator under RCW 71.09" and for "civil
13 commitment under RCW 71.09, Spokane County," in November and December
14 2012.

15 A finding that the presently named Defendants violated Plaintiff's
16 substantive due process rights would necessarily invalidate his continuing
17 confinement. Plaintiff's complaint for damages is precluded under *Heck v.*
18 *Humphrey*, 512 U.S. 477, 487 (1994), until the civil commitment has been
19 invalidated. *See Huftile*, 410 F.3d at 1140. Plaintiff has shown no such
20 invalidation.

1 Mr. Jones has failed to cure the deficiencies of the initial complaint. In the
2 absence of a cognizable federal claim, this Court has no authority to consider
3 Plaintiff's state law claims. Therefore, **IT IS ORDERED** the First Amended
4 Complaint, ECF No. 13, is **DISMISSED without prejudice** to pursuing an
5 appropriate state court or federal habeas remedy. If Plaintiff wishes to challenge
6 the conditions of his present confinement, he may file a separate action in the
7 Western District of Washington.

8 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
9 Order, enter judgment, forward copies to Plaintiff at his last known address, and
10 close the file. The Court certifies any appeal of this dismissal would not be taken
11 in good faith.

12 **DATED** this 27th day of August 2013.

13
14 s/ Rosanna Malouf Peterson
15 ROSANNA MALOUF PETERSON
16 Chief United States District Court Judge
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